REMARKS/ARGUMENTS

Applicants have carefully considered the examiner's Office Action and request favorable reconsideration of the subject application in view of the following arguments.

Claims 1-9 are in the case. The specification has been amended to correct clerical errors. The Abstract of the Disclosure has been amended to shorten the length and remove reference numbers. Claims 1, 3-4, and 6-7 have been amended to improve the language. Claim 1 has also been amended to correct clerical errors and more particularly point out and distinctly claim the subject matter of the present invention. Claims 8-9 have been added. Support for claim 8 can be found at paragraph 7 of page 3; support for claim 9 can be found at paragraph 6 of page 2. No new matter has been introduced.

Applicants filed a certified German priority document on March 1, 2002, upon which the subject application claims priority. However, the Examiner's Office Action dated February 3, 2004 acknowledged neither the priority claim nor the receipt of the certified priority application. Thus, Applicants request that the Examiner acknowledge the safe receipt of the certified priority document or inform Applicants as to the status of the priority claim.

Claim Rejections - 35 USC §112

Claims 1-7 were rejected under 35 U.S. C. §112, first paragraph, as failing to comply with the enablement requirement.

Applicants respectfully disagree and request the reconsideration and withdrawal of the rejection.

The specification discloses how and what is meant by the walls of the package are compacted. For example, as disclosed at paragraphs 17 and 20 and as illustrated in

Figure 1, compacting is accomplished by the tooling which includes a top die, a bottom die, and a heater. In the example, the side wall area "is compacted during the production such that at least the complete side-wall becomes water impermeable" and because of the recess at the bottom die, the bottom has "a strongly deformed, compacted ring-shaped are 8a . . . which adjoins the side wall 7" while "the major portion of the bottom 8 is practically not deformed at all and retains its filtering characteristics." As disclosed at paragraph 22, "[as] a result of the enormous compacting under the effect of supplied heat and the pressure from die 4, the compacted region . . . become water impermeable and . . . obtain a mostly stable form." Thus, a person of ordinary skill in the art would know that compacting is the process of heating and pressing from the combination of the die and heater so as to make the compacted region water-impermeable and stable in form.

Moreover, as illustrated in Figure 2 and disclosed at paragraph 21, "compacted" material has a thickness that is only a fraction of the original material thickness. Thus, the specification is clear on what is meant be compacted and the word has been accurately understood in the examiner's Action. Thus, Applicants request the reconsideration and withdrawal of the rejection.

Claim Rejections - 35 USC §112

claims 1-7 were rejected under 35 U.S. C. §112, second paragraph, as being indefinite.

In this response, Applicants have amended claim 1 to clarify that the side wall is water impermeable. Thus, the rejection has been overcome.

Claim Rejections - 35 USC §102

Claims 1-7 were rejected under 35 U.S.C. §102(b) as being anticipated by Favre, U.S. Patent No. 5,472,719 (Favre reference).

In response, Applicants request favorable reconsideration and withdrawal of the rejections in view of the amendments and the following arguments.

To anticipate a claim, each and every element of the claim must be taught, either expressly or inherently, in a single prior art reference. Claim 1, as amended, of the present invention is directed to a pre-measured portion package having a container for being filled with a pre-measured portion of an aroma carrier. The container has a circumferential side wall, a bottom, and a lid. The circumferential side wall and the bottom are formed of a single piece of material that is water permeable and capable of filtering. Out of the 3 regions of the container including the side wall, the bottom, and the lid, at least the side-wall region is compacted to be water impermeable and at least a section of the bottom is water permeable and functions as a filter. The lid is formed of a material that is water permeable and capable of filtering and is compacted in its circumferential edge region to be water impermeable. The lid is connected to an upper edge of the side wall to form a seal. The Favre reference fails to teach, either expressly or inherently, the present invention as set forth in the amended claim 1.

First, the Favre reference fails to disclose, either expressly or inherently, that the side wall and the bottom of the portion container are formed of a single piece of material and the material is water permeable and capable of filtering as disclosed in the present invention.

As disclosed at column 4, lines 60 to 66, the wall 2 forming the bottom of the cartridge is "flat over its entire surface and extend in a plane running parallel to the plane

of the lower circular edge 1a of the side wall 1 of the cartridge," and "the distance between these two planes being also in the order of 1 to 20 mm, and preferably of 8 to 10 mm." It is quite clear that the bottom wall and the side wall of the Favre reference are not even in contact with each other. Thus, the bottom and the side wall are not formed of a single piece of material.

It is disclosed throughout the Favre reference that the cartridge is made of a material that is impervious and forms watertight casing. See column 1, lines23-27. One has to use perforator, liquid injector, and pressure to add liquid and release brewed beverage in the Favre reference. For example, at column 4, lines 38 to 43, the Favre reference discloses that the "cartridge . . . is comprised of an impervious casing including a side wall 1 closed along its base[sic] by a wall 1 integral with the casing" and "[a]dvantageously, this casing is made from a sheet of aluminum . . ." Thus, the Favre reference fails to disclose the bottom and the side wall of the present invention as being formed of one piece of water permeable material that is capable of filtering.

Second, the Favre reference fails to disclose, either expressly or inherently, that at least a section of the bottom is water permeable and functions as a filter as disclosed in the present invention.

At disclosed throughout the Favre reference, for examples, at column 3, lines 4-7, and column 7, lines 57-62, the cartridge of the Favre reference "comprises a watertight casing including a side wall and two further walls one of which provides the bottom of the cartridge and the other closes the opposite end of the cartridge." These walls are made of a material that is impervious and has be to perforated in order to add brewing water and release the brewed beverage. Therefore, the bottom of the cartridge of the

Favre reference is not water permeable and capable of, at least at some section, functioning as a filter as disclosed in the present invention.

Third, the Favre reference fails to disclose, either expressly or inherently, that the lid of the container is formed of a material that is water permeable and capable of filtering. As discussed, *supra*, all the walls in the Favre reference are made of a material that is impervious and form a watertight casing. Therefore, the lid of the cartridge is not water permeable and capable of filtering as disclosed in the present invention.

Fourth, Applicants disagree with the Examiner's Action stating that the Favre reference teaches water permeable container. The cited sections in the Favre reference disclose a flat obturating membrane that is as impervious as the side wall and bottom of the cartridge and an inner filter membrane under the obturating membrane. Because of the obturating membrane and the watertight casing of the cartridge, the bottom and the top walls in the container of the Favre reference are still watertight and impervious, and none of the side wall, bottom, and lid of the Favre reference function as a filter.

In summary, the Favre reference fails to teach the present invention as set forth in the amended claim 1. Since claims 2-9 depend on claim 1, either directly or indirectly, they are also patentable over the Favre reference. Thus, Applicants request the reconsideration and withdrawal of the rejection.

In view of the foregoing, all rejections have been overcome and claims 1-9, as amended, are in condition for allowance, early notice of which is requested. Should the Examiner believe personal communication would expedite the prosecution, the examiner is invited to contact Applicants' attorney.

No fee is believed to be due for this submission. Should any fee be required, please charge same to Deposit Account No. 22-0261 and notify Applicants' attorney.

Respectfully submitted,

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